

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

UNITED STATES OF AMERICA,)	CRIMINAL NOS: 2:21-cr-13
)	
vs.)	
)	
YORDON VELAZQUEZ VICTORIA,)	
)	
Defendant.)	

**SPECIAL MOTION FOR IMMEDIATE DISCOVERY OF AUDIO
RECORDINGS AND/OR VIDEO TAPE RECORDINGS
AND TRANSCRIPTS THEREOF AND MEMORANDUM OF LAW**

COMES NOW the Defendant, Yordon Velazquez Victoria, by and through his undersigned Counsel, and without waiving any rights, respectfully moves this Honorable Court for the entry of an Order directing the attorney for the government to immediately furnish him with the following:

1. Any and all audio tape recordings and/or video tape recordings of any conversations overheard or recorded by the use of any electronic device or telephone extension or any video device from which any evidence in this case may derive. This paragraph specifically requests audio tapes, video tapes, any other tapes, transcripts, or notes of any conversations with defendant, unindicted co-conspirators, agents of the government, confidential informants, or prospective witnesses in this case, recorded, clandestinely or otherwise, by any person cooperating with the government, or any investigative or prosecutive agent of the state or federal government.

2. Any and all logs, transcripts, notes, or memorandum of any audio conversations and/or videos overheard or recorded by the use of any electronic device or telephone extension from which any evidence in this case may derive.

MEMORANDUM OF LAW

In the present Motion, the Defendant seeks the discovery of information, documents, and like materials which the government has an affirmative duty to disclose upon request pursuant to Rule 16 of the Federal Rules of Criminal Procedure. Furthermore, the instant Motion seeks immediate discovery of the requested material that is in the possession of the government prosecutor or any investigative or prosecutive agent of the federal or state government. If, in fact, the requested tapes and/or videos exist, then they have already been made and there is nothing to prevent the government from immediately providing a copy to defendant and allowing defendant to test the originals.

This Motion sees immediate discovery of the requested material so as to avoid unnecessary delay in the trial and to allow the defendant to determine whether or not the tapes are audible; whether or not the tapes are complete; whether or not the tapes have been in any way altered, or contain any material deletions; to determine whether or not any transcripts are accurate; and, to determine whether or not the defendant desires to submit his own copies of transcripts.

Under Rule 1006 of the Federal Rules of Evidence, before the government could introduce into evidence any composite tape recordings, video tapes, and transcripts which had been produced from its original taped conversations, the originals of the underlining materials must be made available for examination or copying by the defendant at a

reasonable time and place. A “reasonable time” must be at a time long enough in advance of trial to give the defendant’s counsel and defendant a meaningful opportunity to prepare challenges to the materials and to furnish defendant’s own transcripts if desired.

Rule 901(a) of the Federal Rules of Evidence provides that as a condition precedent to the admissibility of evidence, that authentication is required “by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Here the matter in question is any audio tape recordings or video conversations and any transcripts thereof. If, in fact, defendant and his counsel are to be afforded an opportunity to determine whether or not any tapes in this trial or transcripts thereof are, in fact “what its proponent claims,” then defendant and his counsel must have the material for a period long enough in advance of trial to make a complete and accurate determination thereof.

Defendant should have a reasonable opportunity prior to trial to test all tapes and transcripts to see if the government can lay the necessary foundation as required in *United States v. Biggins*, 551 F.2d 64, 66 (5th Cir. 1977); *Bonner v. City of Prichard, Alabama*, 661 F.2d 1206 (11th Cir. 1981); *United States v. Richardson*, 764 F.2d 1514, 1523-24 (11th Cir. 1985); *United States v. Williford*, 764 F.2d 1493 (11th Cir. 1985).

If there are, in fact, tapes and transcripts of recorded conversations which will be prepared by the government in this case, defendants are entitled to submit their own transcripts during trial as provided in *United States v. Cruz*, 765 F.2d 1120 (11th Cir. 1985) and *United States v. Onori*, 535 F.2d 938, 947-49 (5th Cir. 1976), and restated in *United States v. Rosenthal*, 793 F.2d 1214 (11th Cir. 1986).

WHEREFORE, it is respectfully requested that this Honorable Court enter an order directing the Government to immediately deliver for inspection and copying the

aforementioned material or to immediately furnish the defendant with said material and information.

Respectfully submitted this 29th day of June, 2021.

s/Mario Pacella
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Attorney for Yordon Velazquez Victoria

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CERTIFICATE OF SERVICE

I, Mario A. Pacella, counsel for Yordon Velasquez Victoria, certify that I have served all counsel of record Defendant's Special Motion for Discovery of Audio Recordings and/or Video Tape Recordings and Transcripts Thereof and Memorandum of Law via the Court's CM/ECF system on this the 29th day of June, 2021.

s/Mario Pacella

Mario A. Pacella, # 558519

Attorney for Yordon Velazquez Victoria

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